16

FILED
FEB 21 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. ~~601~~

ERIE FORGE COMPANY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, AND BRIEF IN SUPPORT OF PETITION

LEO BRADY,
20 Pine Street,
New York 5, N. Y.,

W. PITT GIFFORD,
615 Masonic Temple Building,
Erie, Pennsylvania,
Attorneys for Petitioner.

APPEAL PRINTING CO., INC., 130 CEDAR STREET, NEW YORK, WO 4-3033

TABLE OF CONTENTS

	PAGE
PETITION FOR WRIT OF CERTIORARI	1
Summary Statement of Matter Involved	1
Jurisdiction	6
Question Presented	6
Specification of Errors	7, 10
Reasons Relied on for Allowance of Writ	7
Prayer for Writ	8
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI	9
Opinions Below	9
Jurisdiction	9
Statement of the Case	10
Statutes Involved	10
Specification of Errors	10
Summary of Argument	11
Argument:	
POINT I—Jurisdiction of the Tax Court is exclusive and its decision final with respect to taxpayer's entire liability for each period in question	13
POINT II—The holding of the Court below that the Tax Court never assumed jurisdiction over the penalties in question is also in conflict with other judicial authority	23
POINT III—The delinquency penalty is a deficiency or is to be treated as a deficiency	25

PAGE

Point IV—A single cause of action may not be split and enforced in part in one court and in part in another 32

Point V—The decision of the Court below permits a collateral attack upon the final decision of the Tax Court 33

Conclusion 33

Appendix (Statutes involved) 37

Table of Cases

Aaron Hirschman (1949), 12 T. C. 1223 28

American Milk Products Corporation *v.* U. S. (Ct. Cl.; 1930), 41 F. 2d 966 29

American Woolen Co. *v.* U. S. (Ct. of Cl.; 1937), 18 F. Supp. 783; aff'd on rehearing (Ct. Cl.; 1938), 21 F. Supp. 1021, cert. den. 304 U. S. 581 ..... 16, 23

Bankers' Reserve Life Co. *v.* United States (Ct. of Cl.; 1930), 44 F. 2d 1000, cert. den. 283 U. S. 836 ..... 17, 22-23

Bouvelt Realty, Inc. (1942), 46 B.T.A. 45 28

Brooks *v.* Driscoll (3 Cir.; 1940), 114 F. 2d 426 ..... 17, 23

Burnet, Commissioner *v.* Sanford & Brooks (1931), 282 U. S. 359 21

Cheney D. Washburn (1927), 7 B.T.A. 483 26

Clinton Corporation (1942), 46 B.T.A. 45 28

Cochran *v.* Commissioner (3 Cir.; 1947), 163 F. 2d 155 21

Commissioner *v.* Erie Forge Co., 167 F. 2d 71 (3 Cir.; 1948; opinion amended by order dated June 17, 1948) 4, 10, 19, 20, 21

Commissioner *v.* Lane-Wells Co. (1944), 321 U. S. 219 29

Commissioner *v.* Sunnen (1948), 333 U. S. 591 ..... 16, 22, 33

Continental Petroleum Co. *v.* U. S. (10 Cir.; 1936), 87 F. 2d 91, cert. den. 300 U. S. 679 (1937) 17, 22

PAGE

Cullen *v.* Commissioner (5 Cir.; 1941), 118 F. 2d 651 29

Dobson *v.* Commissioner (1943), 320 U. S. 489 ..... 13, 14, 34

Elbert *v.* Johnson (5 Cir.; 1947), 164 F. 2d 421 ..... 17, 22
Ely & Walker Dry Goods Co. *v.* United States (8 Cir.; 1929), 34 F. 429, cert. den., 281 U. S. 755 ..... 30, 32
Erie Forge Co., 5 T. C. 1389, (1945 P-H T.C. Memo. Dec. par. 45,384; 4 TCM 1127, CCH Dec. 14,925 (M)) 10, 19, 20

Foster Wheeler Corporation (1939), 40 B.T.A. 1 ..... 19, 31
Fred Taylor (1937), 36 B.T.A. 427 29
Frieda Hempel, 1947 P-H T.C. Memo. Dec. par. 47,183 19

Gordon Keogh (1950), Docket No. 27,343 28
Guarantee Bond & Mortgage Co. *v.* Commissioner (6 Cir.; 1930), 44 F. 2d 297 21
Gutterman Strauss (1924), 1 B.T.A. 243 ..... 19, 29

Helvering, Commissioner *v.* Mitchell, 303 U. S. 391 27
Herbert Eck (1951), 16 T. C. 511 28

Last Chance Min. Co. *v.* Tyler Min. Co. (1895), 157 U. S. 683 ..... 24, 25

Maitland Wilson (1946), 7 T. C. 395 28
Merchants' Transfer & Storage Co. *v.* Burnet (4 Cir.; 1931), 49 F. 2d 56 21
Monjar *v.* Higgins (D. C. So. Dist., N. Y.; 1941), 39 F. Supp. 633 ..... 17, 23

Nelson-Wiggen Piano Co. *v.* United States (7 Cir.; 1936), 84 F. 2d 47 32
Northern Anthracite Coal Co. (1931), 21 B.T.A. 1116 18

Old Colony Trust Co. *v.* Commissioner (1929), 279 U. S. 716 ..... 13, 22
Ormsby McKnight Mitchel (1924), 1 B.T.A. 143, 147 20, 21

Peerless Woolen Mills *v.* Rose (5 Cir.; 1928), 28 F. 2d 661 ..... 17, 18, 22
Plunkett *v.* Commissioner (3 Cir.; 1941), 118 F. 2d 644, affirming 41 B.T.A. 700 29

PAGE

Ross Bowman (1951), 17 T. C.—No. 76 ..... 19, 24
Rowan Cotton Mills Co. *v.* Commissioner (4 Cir.; 1944), 140 F. 2d 277, cert. den. 322 U. S. 740 (1944) 17, 22

Tait *v.* Western Maryland Railway Co. (1933), 289 U. S. 620 ..... 16, 22, 30, 33
Thomas H. McLoughlin (1933), 29 B.T.A. 247 28

United States *v.* Brislow and others (Cir. Ct. D. Ky.; 1884), 20 F. 378 21
United States *v.* Erie Forge Co. (D. C., W. Pa.; 1950), 93 F. Supp. 192 ..... 6, 9
United States *v.* Erie Forge Co. (3 Cir.; 1951), 191 F. 2d 627 ..... 9, 21, 22

Western Express Co. *v.* United States (8 Cir.; 1905), 141 F. 28 21
Western Maryland Ry. Co. *v.* United States (D. C. D. Md.; 1938), 23 F. Supp. 554 32

Statutes*

Internal Revenue Code:

Sec. 271(a) and (b) 29
Sec. 272(a) 2, 15, 22, 30
Sec. 272(b) 22
Sec. 272(e) 3, 16, 22, 30
Sec. 272(f) 22
Sec. 272(h) 22
Sec. 291 28
Sec. 293 28
Sec. 322(c) 14, 22, 29
Sec. 1140 22
Sec. 1141 22
Sec. 250(d) of Revenue Act of 1924 26
28 U.S.C.A. Sec. 1254 (Act of Congress of June 25, 1945; c. 646, 62 Stat. 928) 6, 9
Sec. 3b of the Act of March 27, 1934, c. 95, 48 Stat. 505, as amended (Vinson Act) 22

* See footnote page 14.

Other Authorities

	PAGE
Senate Finance Committee Report No. 52 (69th Cong., 1st Sess.) on the Revenue Bill of 1926, 1939—1 C. B. (Part 2), pp. 351-352	15, 23
House Ways and Means Committee Report No. 2 (70th Congress, 1st Sess.) on the Revenue Bill of 1928, 1939—1 C. B. (Part 2) p. 404	16, 23
Mertens, Law of Federal Income Taxation—V. 9, p. 191	17
Mertens, Law of Federal Income Taxation—V. 9, Secs. 49.02 and 49.06	26
Mertens, Law of Federal Income Taxation—V. 10 A, p. 218	32
15 C. J., Section 27, p. 131	23
21 C. J. Secundum, Secs. 26 and 27, p. 38	23
21 C. J. Secundum, Sec. 87, p. 135	23
VII—1 C. B. 33	26
Senate Finance Committee Report No. 275 (67th Cong. 1st Sess.) Rev. Bill of 1921, 1939—1 C. B. (part 2) pp. 195-196	26
Senate Finance Committee Report No. 885 (78th Cong. 2d Sess.) C. B. 1944, p. 887	26
House Ways and Means Committee Report No. 179 (68th Cong. 1st Sess.) 1939—1 C. B. (part 2) pp. 246-247	26
G. C. M. 22, 326, C. B. 1940-2, July-Dec., p. 159	27, 32